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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEKTAR THERAPEUTICS,)
)
Plaintiff,)
)
vs.) Case No.
) 3:23-cv-03943-JD
ELI LILLY & CO.,)
)
Defendant.)
_____)

HIGHLY CONFIDENTIAL
REMOTE VIDEOTAPED DEPOSITION OF
30(b)(6) REPRESENTATIVE OF
NEKTAR THERAPEUTICS,
JOHN CUMMINGS
TUESDAY, MAY 6, 2025

Reported in Stenotype by:
Cody R. Knacke, RMR, CSR No. 13691
Job No.: 982548

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1 Q. And before that time did employees have the
2 regular Apple Mail app and get their company e-mail
3 that way?

4 A. That's my understanding.

5 Q. And do you recall whether Microsoft Teams
6 has been installed on company-issued mobile devices?

7 A. I believe it has.

8 Q. At one point in time in the past, Nektar
9 used Skype as a chat platform; is that right?

10 A. That is correct.

11 Q. And Skype enabled users to chat using the
12 program; is that right?

13 A. That's correct.

14 Q. Skype also included the ability to conduct
15 videoconferencing and audio calls; is that right?

16 A. Correct.

17 Q. At some point, Nektar stopped using Skype;
18 is that right?

19 A. That is also correct.

20 Q. And when was that?

21 A. July 2021.

22 MS. BONK: We can take down this exhibit
23 and put up Tab 4, please.

24 MR. BATTER: And while that's coming up, I
25 would just like to check in with the witness,

1 to Person) ."

2 Is that right?

3 A. That's what the slide says, yes.

4 Q. So was it your understanding when you
5 worked on this presentation in 2021 in the rollout
6 of Teams that Teams chats would be deleted within
7 24 hours?

8 A. Yes.

9 Q. Is it accurate to say that when Nektar
10 first implemented Microsoft Teams, Nektar made a
11 decision to implement this 24-hour deletion policy?

12 A. It was actually carried over from Skype.

13 Q. When Nektar installed Microsoft Teams, that
14 was a new software, right, different than Skype?

15 A. Yes.

16 Q. And so when Microsoft Teams was set up, the
17 retention period was something that also needed to
18 be set up anew in Microsoft Teams; is that right?

19 MR. BATTER: Objection.

20 THE WITNESS: Correct.

21 BY MS. BONK:

22 Q. Who made the decision at Nektar that the
23 retention period for Microsoft Teams would be
24 24 hours?

25 A. It was my recommendation to my supervisor,

1 who approved it.

2 Q. And why did you make that recommendation?

3 A. Nektar's longstanding business practice in
4 Skype carried through to Teams, is that chats are
5 typically short communications of an administrative
6 nature between employees.

7 Q. Before, you stated that it was usually
8 legal who made the decision as to how long certain
9 data and documents would be retained, and then you
10 would then go implement those recommendations from
11 legal; is that right?

12 MR. BATTER: Objection.

13 THE WITNESS: Yes. And I just said that I
14 made the recommendation, and it was approved.

15 BY MS. BONK:

16 Q. When you say "it was approved," you mean
17 that it was approved by legal?

18 A. It was approved by my supervisor.

19 Q. And who was your supervisor?

20 A. Gil Labrucherie.

21 Q. At that time, what was his role?

22 A. Chief financial --

23 MR. BATTER: Objection.

24 THE WITNESS: Chief financial officer.

25 ///

1 time.

2 MR. BATTER: I do have some questions for
3 you, Mr. Cummings, but it shouldn't be more than
4 five to ten minutes. Okay?

5 THE WITNESS: Understood.

6 MR. BATTER: So with that, I'll dive right
7 in.

8 EXAMINATION

9 BY MR. BATTER:

10 Q. In your observation, what is Nektar's
11 typical practice for the use of Teams chats?

12 A. Teams chats --

13 MS. BONK: Objection.

14 THE WITNESS: -- are used for procedural
15 and administrative items, typically short duration
16 between employees.

17 BY MR. BATTER:

18 Q. And can you give me a few examples of the
19 types of Teams chats you would expect to see?

20 A. Sure. They vary from, can you join our
21 meeting, are you available for a call, to look at
22 this document, where should I place this document,
23 things like that to facilitate the storage of
24 documents and other things.

25 Q. And I don't see this in the realtime, but

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1 did you previously answer that they were for
2 administrative and procedural messages typically?

3 MS. BONK: Objection.

4 THE WITNESS: Yes.

5 BY MR. BATTER:

6 Q. What was Nektar's rationale for setting the
7 Teams chat retention policy to 24 hours?

8 A. It was the rationale that they are for
9 procedural and administrative work, and, as such,
10 since most of our substantive work, the majority of
11 our substantive work, is contained in business
12 documents such as Word, Excel, PowerPoint, that
13 these did not represent anything that needed to be
14 maintained.

15 Q. To your knowledge, has Nektar's retention
16 policy for Teams chats ever been criticized,
17 challenged, or objected to by anyone, either inside
18 or outside of the company?

19 A. No. Not at all.

20 Q. Have you observed that Teams chats are
21 typically used as a tool for substantive or
22 sensitive work at Nektar?

23 MS. BONK: Objection.

24 THE WITNESS: No.

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1 BY MR. BATTER:

2 Q. What tools or software are used for the
3 substantive work that Nektar performs?

4 A. It would be our --

5 MS. BONK: Objection.

6 THE WITNESS: -- Office documents such as
7 Word, Excel, PowerPoint, as well as our line of
8 business applications such as our financial systems,
9 our drug safety systems, and systems of those
10 natures.

11 BY MR. BATTER:

12 Q. And what is the retention policy at Nektar
13 for all of those materials that Nektar uses for its
14 substantive work?

15 A. Indefinitely.

16 Q. Indefinitely meaning those materials are
17 maintained forever?

18 A. Forever. Maintained forever, yes, thank
19 you.

20 Q. Can an individual employee at Nektar decide
21 what e-mails to keep or permanently delete?

22 MS. BONK: Objection.

23 THE WITNESS: No.

24 BY MR. BATTER:

25 Q. And you say no. Why is that?

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1 A. Because of the settings we discussed
2 earlier, we have configured Microsoft Exchange to
3 retain all e-mails, even if a user believes they've
4 deleted it.

5 Q. Did Nektar's IT department need to take any
6 action to maintain e-mails and documents related to
7 this dispute, or was it automatic, given that such
8 materials are maintained forever?

9 MS. BONK: Objection.

10 THE WITNESS: Automatic.

11 BY MR. BATTER:

12 Q. How many Nektar document custodians are
13 there in this case?

14 A. Could you clarify? Currently employed by
15 Nektar?

16 Q. Yeah, let me clarify that.

17 So the parties agreed that Nektar would
18 select -- excuse me. Let me restart that.

19 The parties agreed that Nektar would
20 produce e-mails and documents for certain custodians
21 in this case.

22 Do you know the total number of custodians?

23 A. Yes. There's seven custodians.

24 Q. Did you say seven or 17?

25 A. No. Seven, seven. 17 was the original

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1 number.

2 Q. That's what I'm asking about. So the total
3 number of custodians.

4 A. Oh, yeah, the total number was 17. My
5 apologies.

6 Q. And did some number of those 17 custodians
7 leave Nektar's employment before Nektar filed suit?

8 A. They did.

9 Q. How many?

10 A. Six.

11 Q. Of the remaining 11 employees out of the
12 17, have you learned that some of them do not use
13 Teams chats?

14 A. Yes.

15 MS. BONK: Objection.

16 THE WITNESS: Howard Robin does not use
17 Teams chats.

18 BY MR. BATTER:

19 Q. Okay. You gave Howard Robin as one of the
20 11 who does not use Teams chats; is that correct?

21 A. Yes, that's correct.

22 Q. Anyone else?

23 A. Well, Jennifer Ruddock, Brian Kotzin, and
24 Susan Evans rarely, if ever, used Teams chats.

25 MS. BONK: Objection.

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1 BY MR. BATTER:

2 Q. So you've identified four employees there.

3 A. Correct. A total of four.

4 Q. So that leaves just seven of the 17
5 custodians who use Teams chats?

6 A. Correct.

7 Q. And those custodians -- I mean, you have
8 them in your notes, Mr. Cummings, but is it correct,
9 those seven custodians are Charleen Jue, Jonathan
10 Zalevsky, Danni Yu, Yi Liu, Christie Fanton, Ken
11 Franke, and Lorin Sasaki?

12 MS. BONK: Objection.

13 THE WITNESS: That's correct.

14 BY MR. BATTER:

15 Q. In August 2023 did Nektar's general
16 counsel, Mark Wilson, give an instruction that
17 employees should not chat about the lawsuit or
18 Nektar/Lilly relationship?

19 MS. BONK: Objection.

20 THE WITNESS: Correct.

21 BY MR. BATTER:

22 Q. Were employees given an option to abide by
23 that instruction or was it mandatory?

24 MS. BONK: Objection.

25 THE WITNESS: It was mandatory.

1 BY MR. BATTER:

2 Q. Of the seven Nektar custodians in this
3 action who do use Teams chats, who attended that
4 meeting and received Mr. Wilson's instruction?

5 A. There were four people who attended that
6 meeting and received his instruction.

7 Q. So four of the seven custodians in this
8 action received Mr. Wilson's instruction?

9 A. Yes.

10 MS. BONK: Objection.

11 BY MR. BATTER:

12 Q. And can you identify those four individuals
13 for me?

14 A. Yes. Christie Fanton, Ken Franke, Charleen
15 Jue, and Jonathan Zalevsky.

16 Q. Have you taken steps to assess whether they
17 followed Mr. Wilson's instruction not to use Teams
18 chats to discuss the lawsuit or the Nektar/Lilly
19 relationship?

20 MS. BONK: Objection.

21 THE WITNESS: Yes.

22 BY MR. BATTER:

23 Q. What steps did you take?

24 A. Yes, we collected e-mails captured -- chats
25 captured in e-mails from 2022 to the present, as

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1 well as e-mail chains from March to the present.

2 Q. Did you also talk with each of these four
3 individuals about whether they received that
4 instruction?

5 A. I did.

6 MS. BONK: Objection.

7 BY MR. BATTER:

8 Q. And what did each of those four individuals
9 convey to you about whether they received that
10 instruction?

11 A. They conveyed that they did receive that
12 instruction.

13 Q. And did each of those four individuals
14 convey to you anything about whether they followed
15 that instruction?

16 A. Yes.

17 MS. BONK: Objection.

18 BY MR. BATTER:

19 Q. What did they convey to you about whether
20 they followed that instruction?

21 A. They conveyed that they did, indeed,
22 receive and follow that instruction.

23 Q. Regarding all seven of the custodians who
24 used Teams chats, so not just the four who received
25 Mr. Wilson's instruction, have you taken steps to

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1 confirm how those seven custodians used Teams chats?

2 A. Yes.

3 MS. BONK: Objection.

4 BY MR. BATTER:

5 Q. What did you do?

6 A. I either spoke with them personally or
7 conversed with them via e-mail to confirm their use
8 of Teams chats as related to this matter.

9 Q. And what did each of those seven custodians
10 tell you about their usage or their practice of
11 using Teams chats?

12 MS. BONK: Objection.

13 THE WITNESS: They all -- they all
14 communicated to me that the Teams chats were not
15 used to discuss the lawsuit or Lilly's performance
16 under the obligations of the agreement.

17 BY MR. BATTER:

18 Q. Now, you mentioned a moment ago,
19 Mr. Cummings, that you also collected and reviewed
20 chats that were embedded in e-mails from 2022
21 onward; is that correct?

22 A. Correct.

23 Q. As well as Teams chats full chains from
24 earlier this year onward; is that correct?

25 MS. BONK: Objection.

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1 THE WITNESS: Correct.

2 BY MR. BATTER:

3 Q. And did you have an opportunity to look
4 through those materials?

5 A. I did.

6 Q. And what did those Team chats reflect as to
7 whether employees are following the directive not to
8 discuss the Nektar/Lilly relationship and the
9 lawsuit?

10 MS. BONK: Objection.

11 THE WITNESS: They confirmed -- they
12 confirmed that.

13 BY MR. BATTER:

14 Q. "They" being the documents?

15 A. Yes, the content of the chats.

16 Q. I'd like to briefly show you Exhibit 1478.

17 MR. BATTER: Ken, if you don't mind sharing
18 that on your screen.

19 BY MR. BATTER:

20 Q. Do you recall, Mr. Cummings, that Lilly's
21 counsel asked you questions about the scope of what
22 this document preservation notice covers?

23 A. Yes.

24 Q. And do you see in the second paragraph, as
25 far as what materials should be maintained, the

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1 language used is, quote, "related" -- excuse me.

2 Let me start that over.

3 And you see in the second paragraph as far
4 as what materials should be preserved, the language
5 is those documents, quote, "relating to the
6 Dispute."

7 A. Correct. I do see that.

8 Q. Does this preservation notice require that
9 Nektar employees preserve all documents, regardless
10 of subject matter?

11 A. It does not.

12 Q. Does this notice require only that Nektar
13 employees preserve documents to the extent they are,
14 quote, "relating to the Dispute"?

15 A. It does.

16 Q. And are the Teams chats that you reviewed
17 that we discussed a moment ago, are those related to
18 this dispute?

19 MS. BONK: Objection.

20 THE WITNESS: Not based on my review.

21 MR. BATTER: No further questions.

22 MS. BONK: I have a couple more.

23 FURTHER EXAMINATION

24 BY MS. BONK:

25 Q. Mr. Cummings, you testified earlier today

1 COUNTY OF LOS ANGELES,)
2)
3 STATE OF CALIFORNIA,)

4 I, Cody R. Knacke, Registered Merit
5 Reporter, Certified Shorthand Reporter in and for
6 the State of California, License No. 13691, hereby
7 certify that the deponent was by me first duly sworn
8 and the foregoing testimony was reported by me and
9 was thereafter transcribed with computer-aided
10 transcription; that the foregoing is a full,
11 complete, and true record of said proceedings.

12 I further certify that I am not of counsel
13 or attorney for either or any of the parties in the
14 foregoing proceedings and caption named or in any
15 way interested in the outcome of the cause in said
16 caption.

17 The dismantling, unsealing, or unbinding of
18 the original transcript will render the reporter's
19 certificate null and void.

20 In witness whereof, I have hereunto set my
21 hand this day: May 6, 2025.

22
23
24 

25 CODY R. KNACKE, RMR, CSR No. 13691